IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 352 OF 1991.

The State of Maharashtra. ..Appellants.

vs.

1. Shrinivas Keshav Bhosale.
2. Sanjay Vishwanath Bhosale
2. Pramod Shantaram Bhosale. ..Respondents.

Shri D.P. Adsule, A.P.P. for the State.
None for the Respondents.

CORAM: V.M.KANADE,J.
DATED: 10.1.2005.

ORAL JUDGMENT:

1 The State has filed this appeal against the judgment and order passed by the Judicial Magistrate, F.C., Chiplun, in Regular Criminal Appeal No.90 of 1987. By the said judgment and order dated 18.3.1991 the Judicial Magistrate was pleased to acquit all the accused of the offences punishable under sections 324, 323, and 504 read with section 34 of the Indian Penal Code.

2. The brief facts are as follows:

The prosecution case is that P.W.1- Kishori Kisan

Bhosale was sleeping in her house along with her daughter P.W. 2-Sulbha Kisan Bhosale when accused entered the house and assauled Kishori-P.W.1 with a knife and inflictde an injury on her thigh with the knife. The accused also gave a blow with an iron bar on the head of Dilip Bhosale (P.W.4). A complaint was lodged by P.W.4-Dilip Bhosale and offence was registered against the accused and subsequently charge-sheet was filed. Accused pleaded not guilty to the said offences. The prosecution examined 7 witnesses. The trial Court after appreciating the evidence adduced by the prosecution was pleased to acquit all the accused of the offences with which they were charged.

3 The learned A.P.P. Shri Adsule has taken me through the oral and documentary evidence adduced by the prosecution and also the judgment and order of the trial Court. The incident in question took place on 31.5.1987. The prosecution examined 7 witnesses, out of which P.W.3-Pratibha, P.W.6-Ganpat and P.W.5-Kisan are not supporting the prosecution case and have turned hostile. P.W.3-Pratibha is an independent eye witness. P.W.5-Kisan is the husband of P.W.-Kishori. The only evidence against the accused was the evidence of P.W.1-Kishori, P.W.2-Sulbha, P.W.4- Dilip Bhosale

and P.W.7-Dr. Ramchanadra Shende, who examined the injured person. On perusal of the evidence of P.W.1-Kishori and P.W.7-Dr. Shende, it can be seen that there is discrepancy regarding ocular and medical evidence which has been brought on record. P.W.1-Kishori has stated that accused had inflicted a knife blow on her thigh whereas P.W.7-Dr.Shende has stated that there was merely an abrasion over right thigh of P.W.1. Similarly, there is discrepancy between evidence of P.W.4-Dilip Bhosale and P.W. 1-Kishori. P.W.1- Kishori does not state in her evidence that P.W.4-Dilip Bhosale was present when accused inflicted knife blow on her thigh. However, P.W.4-Dilip Bhosale in his evidence has stated that he was present when accused Shrinivas inflicted blow on the thigh of P.W.1. Thus, there is clear discrepancy regarding presence of P.W.4 at the time when incident in question had taken place. There is also discrepancy regarding the person who in fact inflicted knife blow on P.W.1. According to P.W.1, accused-Vishwanath had inflicted knife blow whereas according to P W.4, accused-Shrinivas had inflicted knife blow on her thigh. The trial Court, in my view, has correctly appreciated the evidence on record. I do not see any reason to interfere with the finding recorded and conclusions reached by the trial Court.

The view taken by the trial Court is a possible view. It is no doubt true that from the evidence of P.W.1 and P.W.2, it is possible to come to a conclusion that the accused had committed an offence punishable under section 323 of the Indian Penal Code, yet, it would not be proper for this Court to substitute the view taken by the trial Court since it is a possible view. The trial Court has disbelieved the evidence of P.W.1.- Kishori and P.W.2 - Sulbha since it is inconsistent with the medical evidence. I do not feel that this is a fit case which would call for interference by this Court while exercising jurisdiction under section 378 of the Criminal Procedure Code. Appeal is accordingly dismissed.